

# STATE PROCUREMENT OFFICE

## FREQUENTLY ASKED QUESTIONS (FAQs)

### On Act 52/2003

#### Section 2 of Act 52:

1. *Is the mandatory pre-bid conference, limited to only construction or design-build projects?*

Yes, only for construction or design-build projects:

- Pursuant to competitive sealed bids (IFB process) with a total estimated contract value of \$500,000 or more; **and**
- Pursuant to competitive sealed proposals (RFP process) with a total estimated contract value of \$100,000 or more.

2. *One of the purposes of Act 52 is to require a pre-bid conference to “allow all interested parties to raise their protests prior to bidding, so that any subsequent protests can be resolved quickly and efficiently.” How does having a pre-bid conference meet this objective when almost all protests involve circumstances that arise post-bid (i.e. subcontractor listing, failure to meet specifications, failure to meet qualifications, etc.)?*

The requirement for pre-bid conference for construction projects will enable potential bidders to have their questions answered prior to bidding, allows for any bid changes through an addendum, and will therefore alleviate any potential problems or questions that arise after the bids are due.

#### Section 4 of Act 52:

3. *Are debriefings mandatory for the RFP process?*

Yes, upon written request by a non-selected offeror. The debriefing is to provide the non-selected offeror the purchasing agency's evaluation of its offer and any other applicable information on the basis for the selection decision and contract award.

#### Section 5 of Act 52:

4. *Will electronic posting (§103D-304, HRS) of award satisfy the requirements of Act 52?*

Yes, the posting requirement in §103D-304(i), HRS (Hawaii Revised Statutes), for \$5000 or more shall be posted electronically within seven days of contract award will meet Act 52 requirement.

5. *Is the “posted electronically” referred to in §103D-304(i) the same as the “posting of award” referred to in §103D-304(k)?*

Yes. Professional service awards are posted on the State Procurement Office webpage at <http://www2.hawaii.gov/professionalservices/>

6. *Section 103D-304, HRS, can the “additional criteria” bump or be moved above or in-between any other three statutory criteria, or must it be number 4 in descending order? We presume weights will be assigned by the Selection Committee to each of the criteria employed.*

§103D-304(e) states the first three required selection criteria shall be in descending order and the fourth for any additional criteria. Therefore, a purchasing agency is locked into the four, in descending order. §3-122-63(b), HAR (Hawaii Administrative Rules), also requires that offerors be informed of item 4 criteria by the selection committee.

7. *Can design consultants only be contracted with in accordance with §103D-304?*

Yes, and pursuant to HRS §103D-307 for emergency procurements.

8. *In a design-build procurement, are we able to utilize the IFB or RFP process for the design professionals to be procured?*  
Use the RFP process, see response in #9 below.
9. *Can a design professional be hired as sub-contractor to a general contractor.*  
Yes, in a design-build RFP, the evaluation and selection is based on the proposed design of the project, and not on the qualifications of the design professional. Also, normally the selection of the design professional is made by the general contractor.
10. *In HRS §103D-304, is the debriefing requirement with the non-selected providers from the review or selection committee list?*  
Since law alludes to those “non-selected” providers, you may limit it to those on the list prepared by the selection committee. However, if a request for debriefing is received from an offeror from the review committee list, the agency will need to comply.
11. *HAR §3-122-63(b) requires offerors be informed in writing prior to submission of resumes of any additional criteria as permitted under 103D-304(e)(4). If the “additional criteria” are determined after publication of notice, how do we meet this requirement.*  
An amendment to the interim rules is proposed as follows: HAR §3-122-63(b) Professional service providers shall be informed in writing by the selection committee of any additional criteria as allowed under HRS §103D-304(e)(4).
12. *Who is allowed to select individuals for the “review” and “selection” committees? Who may serve on the “review and “selection” committees?*  
The head of the purchasing agency (i.e. department head) shall designate both committee members, and this function may be delegated to a procurement officer. Committee members may be employees and/or individuals with sufficient education, training, and licenses or credentials for each type of professional service required. The head of the purchasing agency shall ensure the impartiality and independence of each member.
13. *To what extent must documentation on the evaluation of professional service providers be open for public inspection?*  
In accordance with HAR §3-122-63, all documents relating to the evaluation shall be made available for public inspection, except those sections determined to be confidential under HRS Chapter 92F.
14. *Does the law permit professional services to be contracted with the goal of distributing the work to multiple firms on an equal opportunity basis or must the work be strictly distributed to the best-qualified and experienced firm? The law now states the required evaluation criteria “in decreasing order of importance.” The most important criteria are strictly qualification and experience based.*  
Yes. HRS §103D-304(g) states "If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications." The intent is to award to the best qualified, however, allows equal distribution of contract awards when providers hold the same qualifications or ranking.

**Section 6 of Act 52:**

15. *With respect to the compliance requirement of section 103D-310(c), HRS, is the requirement to “produce documents” applicable to exempt procurements (§103D-102, HRS)*

Section 103D-310, HRS, would not apply to procurements exempt from Chapter 103D, HRS. However, §103D-102(c) states in part "...are nevertheless encouraged to adopt and use provisions of this chapter [103D] and its implementing rules as appropriate...".

16. *My company is incorporated in Arizona, what must I do to comply with Act 52?*

A business entity referred to as a "**compliant non-Hawaii business**" is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, Offeror shall submit a *CERTIFICATE OF GOOD STANDING*.

17. *I'm an individual/sole proprietor in the State of Hawaii, does section 6 apply to me?*

Yes, although you will be exempt in most cases, you still must obtain certificates from DOTAX and DLIR, except for the "Good Standing Certificate" from the DCCA.

A business entity referred to as a "**Hawaii Business**", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, an Offeror shall submit a *CERTIFICATE OF GOOD STANDING* issued by the Department of Commerce and Consumer Affairs, Business Registration Division (BREG). A Hawaii business that is a sole proprietorship is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror's status as sole proprietor or other business entity and its business street address should be indicated on the Offer Form page OF-1 to confirm that the Offeror is a Hawaii business.

18. *My company has no employees located in Hawaii, does section 6 apply?*

To meet section 6 requirements, you will need to get the appropriate certificates or exemptions from DOTAX, DLIR, and DCCA. See #16 above.

19. *I conduct my business over the internet and "drop ship" my goods in Hawaii, what is required to comply with the new law (Act 52)?*

See #16 above.

20. *What kinds of purchases do section 6 affect? Does section 6 apply to all dollar levels?*

All purchases for goods, services, and construction, and applies to all dollar levels. The Hawaii Administrative Rules (HAR), §3-122-112, details the procedures.

21. *Will section 6 of Act 52 help to improve the procurement process?*

It requires that all offerors awarded contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable State employment laws. Previously, some companies were gaining a cost advantage by not fulfilling all requirements of doing business in Hawaii. Section 6 levels the playing field, by requiring all providers to comply with laws governing the general excise tax (HRS Chapter 237), employment security (HRS Chapter 383), workers compensation (HRS Chapter 386), temporary disability insurance (HRS Chapter 392), and prepaid health care (HRS Chapter 393).

22. *Who do I call if I have questions on the certificates from the DOTAX, DLIR, or DCCA?*

Department of Taxation  
Oahu District Tax Office  
Ph. (808) 587-4242

Department of Labor and Industrial Relations  
Administrative Services Office

Ph. (808) 586-8888

Department of Commerce and Consumer Affairs  
Business Registration Division  
Ph. (808) 586-2727

23. *What's available online from these three agencies?*

Department of Taxation, Tax Clearance Form A-6 available at  
<http://www.state.hi.us/tax/alphalist.html>

Department of Labor and Industrial Relations Form, LIR#27 will be available at  
<http://www.dlir.state.hi.us/>

Department of Commerce and Consumer Affairs, Certificate of Good Standing at  
<http://www.businessregistrations.com/>

24. *How do foreign corporations (corporations not incorporated in the State of Hawaii) meet the statutory requirements of §103D-310(c) ?*  
See #16 above.

25. *Under §103D-310, Responsibility of Offerors, "Offerors shall produce documents to the procuring officer to demonstrate compliance with the subsection." What documents must the offeror produce?*  
Pursuant to HAR §3-122-112, the following documents are required for compliance with HRS §103D-310:

Tax Clearance Certificate (Form-A6)  
Certificate of Compliance (LIR#27)  
Certificate of Good Standing

26. *What is required for final payment on a contract?*

Tax clearance certificate (A-6) available at <http://www.state.hi.us/tax/alphalist.html>  
and Certificate of Compliance (SPO Form-22) will be available at  
<http://www2.hawaii.gov/StateForms/ShowForm.cfm?ID=M>.